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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**O'Donnell v K & S Freighters Pty Ltd** (FCA) - administrative law - failure by AAT to address case put to it - denial of procedural fairness - appeal allowed (I G)

**InfraShore Pty Ltd v Health Administration Corporation** (NSWSC) - commercial arbitration - contract - referral of dispute to arbitration refused (I B C)

**Saville v Hallmarc Constructions Pty Ltd** (VSCA) - stay - security of payments - stay of costs orders granted (B C)

**ASIC v Planet Platinum Ltd** (VSC) - corporations - winding up - appointment of provisional liquidator (B)

**Dank v Herald and Weekly Times** (VSC) - defamation - application for judicial mediation in lieu of private mediation refused (I)

**King v Allianz Australia Insurance Ltd** (QCA) - costs - appeal against review of costs assessment allowed - costs assessor's certificate reinstated (I G)

**Boon v Summs of Qld Pty Ltd t/a Big Bill's Bobcats** (QSC) - negligence - plaintiff stabbed in hand with Leatherman knife by defendant's employee during lunchbreak - neither employee nor defendant liable (I)

## Summaries With Link (Five Minute Read)

### **O'Donnell v K & S Freighters Pty Ltd [2015] FCA 573**

Federal Court of Australia

Perram J

Administrative law - worker injured during fall - worker appealed from decision of Administrative Appeals Tribunal in which central question was whether worker's injury caused subsequent freezing of shoulder, which aggravated unrelated degeneration in vertebrae causing shooting nerve pain down arm - held: AAT did not answer central question - instead AAT had asked whether damage to vertebrae was caused by fall - AAT denied worker procedural fairness by failing to deal with case put by worker and rejecting case he did not put - AAT also denied procedural fairness by finding worker to be poor historian and prone to exaggeration when respondent did not suggest this to AAT - worker denied opportunity to point out that such findings were immaterial and wrong - appeal allowed - declaration that unnecessary credit findings were made breach of rules of procedural fairness.

[O'Donnell](#) (I G)

### **InfraShore Pty Ltd v Health Administration Corporation [2015] NSWSC 736**

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - contract - defendant sought order that proceedings be referred to arbitration pursuant to s8 *Commercial Arbitration Act 2010* (NSW) (the Act) and order that proceedings be stayed - whether action was matter subject of arbitration agreement - construction of contract - held: there was no agreement for referral of present dispute to arbitration to which s8 could attach - arbitration agreement was not operative in relation to dispute - motion dismissed.

[InfraShore](#) (I B C)

### **Saville v Hallmarc Constructions Pty Ltd [2015] VSCA 144**

Court of Appeal of Victoria

Tate & McLeish JJA

Stay - costs - applicant sought stay of costs orders until determination of his appeal in proceeding brought by respondent arising under *Building and Construction Industry Security of Payment Act 2002* - r66.16 *Supreme Court (General Civil Procedure) Rules 2005* - held: applicant and business in serious financial difficulty - there was risk that if stay not granted business run by applicant might not recover - respondent would not be prejudiced if stay granted - appeal raised issues of substance - special and exceptional circumstances justifying stay - stay granted.

[Saville](#) (B C)

### **ASIC v Planet Platinum Ltd [2015] VSC 273**

Supreme Court of Victoria

Efthim AsJ

Corporations - winding up - ASIC sought appointment of provisional liquidator pursuant to s472(2) *Corporations Act 2001* - held: there was valid and duly authorised winding up application - there was reasonable prospect there would be a winding up order - it was in public interest to appoint a provisional liquidator - public interest demanded that provisional liquidator be appointed - affairs of company had been carried out casually and without due regard to legal requirement - provisional liquidator appointed.

[ASIC](#) (B)

## **Dank v Herald and Weekly Times [2015] VSC 270**

Supreme Court of Victoria

Dixon J

Defamation - plaintiff sought judicial mediation in lieu of usual order for private mediation on basis plaintiff could not afford to pay his share of cost of mediation - s66 *Civil Procedure Act 2010* - r50.07 *Supreme Court (General Civil Procedure) Rules 2005* - Practice Note No 2 of 2012 *Judicial Mediation Guidelines* - onus - held: plaintiff had placed no material before Court - Court unable to evaluate claim or form view whether costs should be borne by whomever is funding litigation - Court could not assess whether it was appropriate case to depart from usual practice of ordering private mediation - application refused.

[Dank](#) (I)

## **King v Allianz Australia Insurance Ltd [2015] QCA 10**

Court of Appeal of Queensland

Philippides JA; Mullins & Burns JJ

Costs - motor vehicle accident - costs assessment - appellant suffered whiplash in motor vehicle accident - claim settled - respondent sought review of costs assessment pursuant to r742 *Uniform Civil Procedure Rules 1999* - review successful in respect of two complaints - appellant sought that respondent's application for review be dismissed so that position prior to primary judge's decision restored - whether basis on which primary judge excluded costs associated with doctor's report was anticipated by respondent's objection before costs assessor - whether ground before primary judge that costs assessor's reasons for not reducing care and consideration were inadequate - held: primary judge should not have allowed review in respect of objection concerning costs associated with doctor's report or reduced amount for care and consideration - appeal allowed - costs assessor's certificate reinstated.

[King](#) (I G)

## **Boon v Summs of Qld Pty Ltd t/a Big Bill's Bobcats [2015] QSC 162**

Supreme Court of Queensland

A Lyons J

Negligence - plaintiff stabbed in hand with Leatherman knife by defendant's employee during lunch break at construction site - plaintiff employed by company (Globe) which was contracted by another company (Downer) to provide workers at construction site controlled and monitored by Downer - defendant company was subcontracted by Downer to remove and replace asphalt



# Benchmark

at construction site - plaintiff sued defendant company for breach of duty to take reasonable care not to expose him to a foreseeable risk of injury and/or claimed defendant vicariously liable for employee's negligent acts - s9, 59, 61 & 62 *Civil Liability Act 2003 (Vic)* - s6, Sch 4 & Sch 6A *Civil Liability Regulation 2003* - held: not established defendant's employee was negligent - Court not satisfied reasonable employer in position of defendant company would have taken steps argued by plaintiff to avoid the risk of injury - judgment for defendant.

[Boon](#) (I)

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